

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 351 of 1999  
with  
CIVIL APPLICATION No 7117 of 1999  
with  
CIVIL APPLICATION No 7620 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No

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KALPESH INDRAVAN SHAH

Versus

GUJARAT MACHINERY MANUFACTURES LTD.

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Appearance:

MR YATIN SONI for Petitioner

MR NALIN K THAKKER for Respondent No. 1

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 03/08/1999

ORAL JUDGEMENT

In this Appeal from Order, the appellant herein  
has brought in challenge the order of issuance of ex  
parte ad-interim injunction dated 12.4.1999 recorded

below Ex.6 in Special Civil Suit No.59 of 1999 by the learned Civil Judge (S.D.), Anand whereby the appellant was directed to furnish security for Rs.5,00,000/- with one solvent surety within the returnable date i.e. 15.4.1999 and also issued urgent show cause notice against the appellant returnable on 15.4.1999.

2. The present appellant is the defendant while the respondent is the plaintiff. For the sake of convenience and brevity, the parties are hereinafter referred as 'plaintiff' and 'defendant' respectively.

3. The plaintiff has filed a suit for recovery of Rs.5,70,000/- from the defendant by way of damages on the grounds stated in the plaint. Along with the suit, Ex.6 was also tendered by the plaintiff wherein inter alia it was alleged that the plaintiff was about to leave India and try to run away abroad in order to defeat the fruits of the decree and delay in execution of the decree which may be passed in the suit in favour of the plaintiff and against the defendant and, therefore, relief of injunction was sought restraining the defendant from leaving India unless and until the defendant furnishes security to the tune of Rs.10 lakhs.

4. On presentation of the plaint and the application, the learned trial Judge has granted ex parte relief as sought for, as mentioned hereinabove. Aggrieved thereby, the defendant has knocked the doors of this court by filing Appeal from Order under the provisions of Order 43 Rule 1 of the Code of Civil Procedure, 1908.

5. At the time of admission of the Appeal from Order, this Court has stayed the order impugned on the condition that the appellant shall deposit his passport before the lower court within a period of one week from the date of order recorded in Civil Application No.7117 of 1999. On the returnable date, the appellant has moved Civil Application No.7620 of 1999 wherein relief for modifying the order recorded in earlier Civil Application No.7117 of 1999 was sought wherein inter alia it was stated that the appellant is the joint owner along with his mother Dharmishthaben of the immovable property of non-agriculture land of City Survey No.734 paikar the land of plot No.628 admeasuring 419.29 sq. mtrs. along with built up structure of 2400 sq. ft. of residential building situated at Vidyanagar, taluka Anand, district Kheda and therefore he is not likely to run away leaving behind the aforesaid property. It is also stated that he is the co-owner of the aforesaid property worth Rs.20

lakhs and therefore the order passed by this Court of depositing his passport, which he has already complied with, may be modified suitably by returning his passport.

6. I have heard learned advocate Mr.Yatin Soni for the appellant and Mr.N.K.Thakkar for the respondent. Mr.Thakkar has objected against the relief of modification and reiterated that the appellant may be ordered to furnish solvent surety for Rs.5 lakhs as ordered by the learned trial Judge.

7. The only question which calls for determination in this Appeal from Order is as to whether the property stood in the joint names of the appellant and his mother, mentioned in the Civil Application, can be attached till pendency of the suit by substituting the order of furnishing security of Rs.5 lakhs with one solvent surety recorded by the lower court and by this Court whereby the appellant was ordered to deposit his passport? At the time of hearing of this Appeal from Order, this Court has asked learned advocate Mr.Soni to file an undertaking to the effect that during pendency of Special Civil Suit No.59 of 1999, the appellant shall not transfer, sell or mortgage the said property and also make a declaration that the said property is free from any encumbrance and not involved in any proceeding. Pursuant thereto, the appellant has filed an undertaking and also annexed a certified copy of the extract from the Property Register issued by the Maintenance Surveyor, City Survey Office, Vidyanagar showing that the said property stands in the joint ownership of the appellant and his mother, and a Certificate issued by architect showing valuation of the property as worth approximately Rs.20 lakhs.

8. After having given anxious considered thought to the aforesaid aspect and on perusal of the judgment impugned and on the facts and circumstances emerging from the record of the case and also on perusal of the undertaking and the documents annexed thereto, I am of the opinion that the order recorded by the learned trial Judge as well as the order recorded by this Court in Civil Application No.7117 of 1999 can suitably be modified by granting the order of attachment before judgment qua the property stood in the joint name of the appellant and his mother bearing City Survey No.734 paikee and land of plot No.628 along with structure thereon till disposal of the suit and the same would meet the ends of justice.

9. In view of the aforesaid, Appeal from Order is allowed in part and accordingly it is allowed partly,

however, with no order as to costs. It is hereby ordered that the property bearing City Survey No.734 paikée the land of plot No.628 admeasuring 419.29 sq. mtrs. along with structure thereon shall be taken in attachment before judgment under the provisions of Order 38 Rule 5 of the Code of Civil Procedure till disposal of the suit. The learned trial Judge is hereby directed to pass suitable order in terms of the order recorded by this Court and also return the passport deposited by the appellant herein forthwith.

10. No observations made hereinabove shall be construed as expression of opinion with respect to merits of the pending suit. The learned trial Judge shall decide all the questions involved therein in accordance with law.

11. In view of the above, no order is required to be passed in Civil Applications Nos.7117 of 1999 and 7620 of 1999.

(KMG Thilake)

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